

*[James Henckell, Mary Glover, and Henry Voght, William Snelgrave, James Pearce in his own Right, and as Executor of Jeremiah Pearce deceased, Robert More, and Mary his Wife, Executrix of John Dagge deceased, and Elizabeth Grove, Administratrix of Joseph Grove deceased.]*

*Catherine Morice, Widow and Executrix of Humphry Morice, Esq; deceased, Ann Morice, Judith Morice, and Elizabeth Morice, the Three surviving Children of the said Humphry Morice, Sir Thomas Lee, Thomas, William, and Ann Lee, Ann Sandes, John Claxton, Sarah Claxton, Brown Claxton, Ann Colemore, and others.*

## The Case of the said APPELLANTS.

The several Debts due to the Appellants from Humphry Morice at his Death, viz. 16 Nov. 1731.

The Respondent Catherine Morice, his Widow and Sole Executrix, proved his Will.

The Actions at Law brought by the Appellants, and those whom they Represent against the Respondent Mrs. Morice, and the Proceedings therein.

**T**HAT the said Humphry Morice died on the 16th of November 1731, indebted 200,000*l.* or thereabouts, particularly to the Appellant Henckell 2089*l.* 5*s.* for Goods sold and deliver'd; To the Appellants Glover and Voght in Partnership, 1440*l.* for Goods sold and deliver'd; To the Appellant Snelgrave, 1948*l.* remaining due upon two Promissory Notes for 1000*l.* each, payable with Interest; To the Appellant James Pearce 2115*l.* upon a like Promissory Note for 2000*l.* payable with Interest; To the said Jeremiah Pearce, since deceased, 935*l.* 16*s.* upon several Promissory Notes payable with Interest; To the said John Dagge, since deceased, 1015*l.* 18*s.* upon a like Promissory Note for 1000*l.* payable with Interest; And to the said Joseph Grove, since deceased, 4000*l.* upon a Promissory Note, besides 103*l.* 6*s.* 5*d.* for Goods sold and deliver'd.

That the Respondent Catherine Morice, his Widow and sole Executrix, proved his Will immediately after his Death.

That she refusing to pay any of the said Debts, the Appellant Henckell on the 18th of January 1731, sued forth a *Capias* in the Common Pleas, *Teſte* the 29th of November 1731, and returnable the 1st Return of *Hillary Term* then next; and the same Day served the said Catherine Morice with a Copy thereof. And the Appellants Glover and Voght on the 25th or 26th of the same January, sued out a like *Capias*, *Teſte* the 24th of the same January, returnable the 2d Return of the same Term. And the Appellants Snelgrave, and James Pearce, and the said Jeremiah Pearce, and John Dagge on the 15th Day of the same January, sued forth several Writs of special *Capias* by Original, in the King's-Bench, each *Teſte* the said 29th of November 1731, and returnable the 1st Return of the same *Hillary Term*; to all which Writs the said Catherine Morice appeared at the several Returns thereof. And the said Joseph Grove on the 24th of January 1731, sued out a special Writ of *Latitat*, *Teſte* the said 29th of November 1731, returnable the same 24th of January; and on that Day served the said Catherine Morice with a Copy thereof, who afterwards appeared thereto.

That the Appellants James Henckell, Snelgrave, and James Pearce, and the said Jeremiah Pearce, and John Dagge, on the 24th, and the said Joseph Grove on the 25th of January 1731, severally deliver'd Declarations, and gave Rules to plead in their several Actions: And the Appellants Glover and Voght deliver'd a Declaration on the 28th of the same January.

That the said Catherine Morice on the 27th of the same January, moved the Court of *Common Pleas* in the Appellant's Henckell's Cause, for Time to plead till *Easter Term* then next; and to support her said Motion, an Affidavit sworn by her on the 25th of the same January was read, whereby she (amongst other Things) "Swore that upon the Death of the said Humphry Morice, his Affairs were found very much involved with Debts, and in the greatest Disorder and Confusion, in so much that she had not been able to settle and reduce the same to any Certainty as to his Debts, and the Natures and Kinds thereof": And upon that Motion she obtained a Week's Time to plead. And upon another Motion in the same Cause, made on the 3d of February, the said Court indulged her with two Days more: And upon Motions made the 29th of the same January, in the several Causes wherein the Appellants Snelgrave, and James Pearce, and the said Jeremiah Pearce, and Dagge were Plaintiffs, the said Catherine Morice obtained a Week's Time to plead: But she was to plead to issue, and accept Notice of Tryal within the said Term.

That on the 6th of February 1731, the Respondent Mrs. Morice, put in several Pleas to the said several Actions, and thereby pleaded several Bonds and Specialties owing by the said Humphry Morice, and a Judgment obtained against her by John Maynard, amounting together to about 15000*l.* and that she had only 1000*l.* Aſſetts to pay.

That the Appellants being then unable to falsify the said Pleas, the Appellant Henckell on the 7th of the same February, took Judgment against the said Catherine Morice upon the future Aſſetts of the said Humphry Morice; and on the 9th of the same February, executed a Writ of Inquiry, and the Jury found Damages 2089*l.* 5*s.* and 1*l.* 7*s.* 4*d.* Costs; and on the 16th of the same February signed Judgment for the said Damages and Costs, which, with the Increase of Costs allowed on such Judgment, amounted to 2135*l.* 15*s.*

That the Appellants Glover and Voght having taken the like Judgment on the future Aſſetts, the said Catherine Morice on the 11th of the same February confessed the Damages in their Action to be 1440*l.* And on the 8th of March 1731, they signed final Judgment for the said 1440*l.* and for 40*l.* Costs, making together 1480*l.*

That the Appellants Snelgrave, and James Pearce, and the said Jeremiah Pearce, John Dagge, and Joseph Grove, also severally took the like Judgments upon the future Aſſetts, and their several Debts being ascertained by the said Promissory Notes, the Respondent Mrs. Morice on the same 11th of February, confessed the Damages in their several Actions, and thereupon they severally signed final Judgments of the same *Hillary Term* for the several Sums following, viz. The Appellant Snelgrave for 1948*l.* The Appellant James Pearce for 2115*l.* The said Jeremiah Pearce for 935*l.* 16*s.* And the said John Dagge for 1015*l.* 18*s.*

That the Respondent Mrs. Morice's several Applications to the Courts of Law for Time to plead to the said Actions, although made under pretence of the great Confusion of her Testator's Affairs, and her Ignorance of the Debts he ow'd, and the Natures thereof, were really intended only to delay the Appellants, and to gain Time to perfect her Scheme of subjecting all the Aſſetts of her Testator to the Debts of his Relations and his other particular Friends, and them to apply to a Court of Equity for Protection. And accordingly having after full Notice of the Appellants Demands, voluntarily, and as the Appellants apprehend, collusively and in concert with the several Creditors the intended to prefer, submitted to Decrees in Causes brought against her by the Respondents Ann Judith and Elizabeth Morice, and others of her Testator's Relations, and his or her Friends, for several great principal Sums of Money, and Interest at 5 per Cent. not only down to the Time of pronouncing the several Decrees, but till the Money decreed should be paid, which, together with her Testator's Debts by specialty, amount to more than his whole Aſſetts.

On the 8th of February 1731, she exhibited her Bill in the Court of Chancery, (which was twice amended) and the afterwards exhibited her Bill of Revivor and supplemental Bill against the Appellants, and against the Respondents Ann, Judith and Elizabeth Morice, Sir Thomas Lee, Thomas, William, and Ann Lee, Ann Sandes, John Claxton and Sarah his Wife, Brown Claxton, and Ann Colemore, and against several other Creditors of the said Humphry Morice; and thereby (amongst other Things) alledg'd that the Appellants, and the said Jeremiah Pearce, John Dagge, and Joseph Grove, and many others of the Defendants, had Dealings with the said Humphry Morice, and that the Accounts remained unsettled between him and them, on stating whereof considerable Sums would appear to be owing to her. And

6th Feb. 1731.  
Mrs. Morice pleaded to the Actions.

Henckell's Judgment on the future Aſſetts.

The like of Glover, and Voght.

The like Judgment of Snelgrave, James Pearce, Jeremiah Pearce, John Dagge, and Joseph Grove.

8th Feb. 1731.

Mrs. Morice filed her Bill against the Appellants, Creditors of her Husband.

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25th Jan. 1731.  
Decree at the Rolls in the Cause by Consent brought by Mr. Morice's Children and Relations against Mrs. Morice, for several principal Sums, making 48073 l. 13 s. and 10094 l. 17 s. 3 d. Interest, in all 58168 l. 10 s. 3 d. with subsequent Interest for the Principal till paid.

2d Feb. 1731.

Decree at the Rolls in the Cause by Consent brought by Mrs. Colemore, against Mrs. Morice.

8th Feb. 1731.

The Master's Report in Colemore's Cause.

9th Feb. 1731.

Decree on that Report.

Prayer of the Bill.

The Appellants Answers to Mrs. Morice's Original amended, and supplemental Bills, viz.

Henckell.

16th Nov. 1732.  
Order for Henckell, Glover and Voght, Snelgrave, James and Jeremiah Pearce, and Dagge, to proceed at Law to make Mrs. Morice personally liable.

Glover and Voght.

Snelgrave and others.

11th of May, 1733.  
Orders for bringing into the Bank the distinct Sums recovered at Law by each of the Appellts. (except Mrs. Grove) and thereupon for continuing the Injunction.

The Appellants unacquainted with the Decrees at the Rolls, till Mrs. Morice filed her Bill.

Some Circumstances relating to those Suits.

From the Filing the Children and Relations amended Bill, but 12 Days to an absolute Decree, for upwards of 58,000 l. without any Account directed of what was due.

And that on the said 25th of January 1731, a Decree was pronounced against her by his Honour the Master of the Rolls, for Payment in a Course of Administration out of the Assets of her Testator, of 16500 l. principal Money, with 9153 l. 3 s. Interest, and 1622 l. 7 s. 3 d. Principal, with 91 l. 1 s. 6 d. Interest, to the Respondents Ann, Judith and Elizabeth Morice; and for Payment of 7400 l. Principal, with 263 l. Interest, and 1622 l. 7 s. 3 d. Principal, with 91 l. 1 s. 6 d. Interest, to the Respondents Sir Thomas Lee, Thomas, William, and Ann Lee; and for Payment of 5000 l. Principal, with 151 l. 14 s. Interest, and 7000 l. Principal, with 212 l. 7 s. Interest, and 4306 l. 11 s. 3 d. Principal, and 96 l. 10 s. 9 d. Interest, to the Respondents John Claxton and his Wife, and Brown Claxton; and for Payment of 3000 l. and 1622 l. 7 s. 3 d. both principal Sums, and 25 l. 19 s. 6 d. Interest, to the Respondent Ann Sandes; and that subsequent Interest should be carried on for all the said principal Sums; and that in Obedience to that Decree, the said Catherine Morice had on the 4th of February 1731, paid the Sum of 10111 l. to the said Ann and Judith Morice. And the further alledged, that on the 2d of February 1731, another Decree was pronounced by his Honour the Master of the Rolls, whereby (amongst other Things) it was decreed, that out of the said Assets she should Purchase 862 l. 3 s. 6 d. South Sea Stock, and 319 l. 13 s. South Sea Annuity Stock; and lay out 104 l. 18 s. 2 d. in the Purchase of South Sea Annuities, to be transferred to Trustees for the Benefit of the said Ann Colemore; and that the Master to whom the said Cause was referred, should certify whether 500 l. East India Stock transferred to the said Humphry Morice in Trust, remained unaltered at his Death: And that on the 8th of the same February, the said Master made his Report, and certify'd that the said 500 l. East India Stock remained unaltered, and that half a Year's Dividend thereon was unreceived, and that several Sums were due for Interest and Dividends of the said Stocks and Money, amounting to 47 l. 7 s. 6 d. And she further alledged, that his Honour the Master of the Rolls, on the 9th of the same February, had decreed that she should Transfer the said 500 l. East India Stock to Trustees, for the Benefit of the said Ann Colemore, and pay the half Year's Dividend due thereon when received; and also the said Sum of 47 l. 7 s. 6 d. out of Assets in a Course of Administration. And by the said Bills (amongst other Things) she prayed that the Appellants, and the said Jeremiah Pearce, John Dagge, and Joseph Grove, and many others of the Defendants, might be restrained from proceeding at Law to recover the Assets of the said Humphry Morice; and that such of the Defendants as were indebted to his Estate, might pay what was due to the said Catherine Morice: And that what should appear due to any of the Defendants, might be paid out of the said Assets of the said Humphry Morice, as far as they would extend in a Course of Administration, and that she might be indemnified in paying Obedience to the said Decrees.

That the Appellants, and the said Jeremiah Pearce, and John Dagge, by their several Answers, swore that the said Humphry Morice at his Death, was indebted to them respectively as before set forth, and that no other Accounts were depending between them, and that they had obtained such Judgments as aforesaid.

That the Appellant Henckell by his Answer swore, that in September 1732, he had sued out a *Scire facias*, on his Judgment against the said Catherine Morice, suggesting Assets come to her Hands; to which she pleaded, that no such Assets had come to her Hands. Whereupon Issue was joyned, and that pursuant to an Order of the Court of Chancery of the 16th of November, 1732, (whereby the Appellants Henckell, Glover, and Voght, Snelgrave and James Pearce, and the said Jeremiah Pearce and John Dagge, since deceased, were at Liberty to go on at Law, and to make the said Catherine Morice personally liable, but not to take out Execution without Leave of the Court. The said Appellant Henckell had proceeded to Tryal on the said Issue, and at the Sittings after Michaelmas Term, 1732, had fully proved Assets beyond the Monies due on the Specialties, and Judgment pleaded by the said Catherine Morice, come to her Hands, sufficient to answer his Demands; and that thereupon a Verdict was given, and Judgment entred up against the said Catherine Morice for 2254 l. 13 s. out of the Assets of the said Humphry Morice, and that a Writ of *Fieri facias* having issued against her, the Sheriffs of London had returned, that she had wasted the Assets to the Amount of the Appellant Henckell's said Debt; and that thereupon he had obtained Judgment against her for the said 2254 l. 13 s. out of her proper Estate, and insisted, that notwithstanding the said Decrees, he ought to be at Liberty to take out Execution on his said Judgment; especially as he had, in a due Course of Law, and at a great Expence, without any Favour or Assistance from the said Catherine Morice, obtained the same.

That the Appellants Glover and Voght, by their Answer swore, That pursuant to the like Order of the 16th of November, 1732, they had, on the like *Scire facias* and Tryal of the like Issue on the same Day, obtained a Verdict for their Debt, and signed Judgment for the same; and that the Sheriffs of London, upon a like Writ of *Fieri facias*, had returned a *Devastavit*; whereupon they had obtained Judgment against the said Catherine Morice for 1480 l. which, with Costs taxed, amounted to 1591 l. 7 s. 5 d. to be paid out of her own proper Goods; and in like Manner insisted to be at Liberty to take out Execution.

That the Appellants Snelgrave, James Pearce and Elizabeth Grove, and the said Jeremiah Pearce and John Dagge, by their several Answers swore, that in the same Michaelmas Term, 1732, the said Snelgrave, James Pearce, Jeremiah Pearce, John Dagge, and the said Joseph Grove, had severally sued forth the like Writs of *Scire facias*; to which the said Catherine Morice pleaded the like Pleas, as she had pleaded to the said Henckell, Glover, and Voght; and that for avoiding the unnecessary Expence and Trouble of many Tryals, and at the Request of the said Catherine Morice's Attorney, they had waited the Event of the Issues joyned between her and the said Henckell, Glover, and Voght; which being tried, and found against her, she had, according to her Attorney's Promise, withdrawn the several Pleas pleaded to the said Writs; and that thereupon they had severally recovered Judgments, as of the same Michaelmas Term, and insisted to proceed thereon, since whatever Difficulties or Hazards the Respondent Mrs. Morice was under, or exposed to, she had brought them upon herself, by contriving to give an undue Preference to some of her Testator's Creditors, and to administer his Assets unequally; and that therefore there was no Foundation for a Court of Equity to interpose, to the Prejudice of those who had obtained Judgments at Law, and were at least equally fair and honest Creditors with those to whom the said Respondent had contrived to give such Preference.

That by six several Orders, all dated the 11th of May, 1733, reciting the said Orders of the 16th of November, 1732, and the several Judgments recovered against the said Respondent Catherine Morice, pursuant to the Liberty thereby given, It was ordered, That on her bringing into the Bank the several distinct Sums by the Appellants Henckell, Glover, and Voght, Snelgrave, James Pearce, and the said Jeremiah Pearce and John Dagge, severally recovered at Law as aforesaid, the Injunction which had been obtained by the said Catherine Morice, and had been continued upon pronouncing the said Orders of the 16th of November, 1732, should be continued to the Hearing: Which several Sums of Money were accordingly paid into the Bank, and now remain there.

The Appellants had not the least Intimation of the said Decrees of the 25th of January, 1731, and the 2d of February 1731, until the Respondent Mrs. Morice exhibited her said Original Bill: But upon Enquiry into those Proceedings, they found, that the Bill of the said Respondents Anne, Judith and Elizabeth Morice, and others, was filed the 15th Day of December, 1731, and amended in Pursuance of an Order of the 13th of January, 1731. And that on the 2d of the same January, the Respondent Mrs. Morice put in her Answer, without being served with Process, and thereby admitted the same Sums to be due to them respectively, both for Principal and Interest, as were charged by the said Bill, being upwards of 58,000 l. (whereof above 10,000 l. was for Interest, after the Rate of 5 per Cent. computed to the Day of filing the Bill) without craving any Allowance or Deduction whatsoever, or deferring any Account to be taken of what was due, or without being served to hear Judgment, she submitted to a Decree for the Payment of the said Monies on the 25th of January, 1731. (being the very Day on which the said Affidavit was sworn by her of the Confusion of her Testator's Affairs, and her Ignorance of his Debts, and the Nature of them;) which was pronounced upon the bare Admission of the Respondent Catherine Morice, without any Proof; and the said other Decree was obtained on the 2d of February, 1731, upon the like Admission of the Respondent Mrs. Morice, (who also put in her Answer to that Bill without being served with Process.) And notwithstanding the several Writs of the Appellants Henckell, Snelgrave and James Pearce, and of the said Jeremiah Pearce and John Dagge, against her, were returnable, and she had actually appeared thereto, and had full Notice of their said Demands before she had put in her said Answers, yet she did not thereby disclose, that any of the said Actions were brought against her.

The Answers of the Appellants, and of the other Defendants to the Respondent Catherine Morice's Bill being reply'd to, and Witnesses examined, and Publication passed, the said Cause came on to be heard before his Honour the Master of the

the

1st of August 1735. the Rolls, on the 1st Day of August, 1735. who was pleased, (amongst other Things to Decree) " That the Defendants, Decree at the Rolls in the " the Judgment Creditors, and the rest of the Defendants the Creditors, should be enjoyned from proceeding at Law for so Suit brought by Mrs. Morice against the Creditors.

" much of the Assets as was recovered by the said Decrees of the 25th of January, and the 2d and 9th of February, 1731.  
 " And as to the Respondents Claxton and his Wife, (who claimed to be Creditors by Speciality) his Honour declared, that they were to be considered as Creditors by simple Contract, and to come in with the other Creditors in the said Decree of the 25th of January, 1731. And the Respondents the Bank of England were to permit the Plaintiff to transfer the 3000l. Bank Stock, standing in Mr. Morice's Name; which was to be considered as his Assets, and the Dividends thereof, due and to grow due, were to be laid out in the Name of the Accountant-General in South-Sea Annuities, subject to further Order: And the Master was to take a mutual Account between the Respondent Mrs. Morice, as Executrix of the said Humphry Morice, and the Defendants who had not obtained Judgments or Decrees, (except the Defendant Coldham who disclaimed) with usual Directions: And what should be found due from any of the Creditors to her, they were to pay to her: But what should be found due to any of them, she was to pay them out of Assets. And his Honour declared, that the Respondent Mrs. Morice could not have her Election, whether she would abide by her Settlement, or take the Sum of 5000l. reserved to her in this Cause, as she prayed by her Bill, and directed, that the Money which had been paid into the Bank, (pursuant to the several Orders before-mentioned) should be laid out in South-Sea Annuities, in the Name of the Accountant-General, subject to further Order; and all Parties were to be paid their Costs, to be taxed by the Master, out of the said Testator's Estate.

6th of Nov. 1736.  
 Lord Chancellor's Decree upon the Appeal.

The Decree obtained by Anne and Judith Morice, varied; and an Account directed touching what was to be allowed for their Maintenance.

The Plantiffs in the Decree of the 25th of Jan. 1731. to be paid in the first Place.

Then the Plantiffs in the Decrees of the 2d and 9th of Feb. 1731.

The Appellants having appealed from the said Decree to the Right Honourable the late Lord High Chancellor, the said Cause was heard on their Appeal, and also on the Appeals of several others of the now Respondents; and on the 6th of November last his Lordship " decreed an Account of what was due to the several Creditors by Decrees and Judgments, on their Decrees and Judgments, (except the said Defendant Coldham, who disclaimed the Judgment obtained in his Name;) and also of what was due to the other Creditors, who had not obtained Decrees or Judgments: But in taking the Account of what was due to the said Ann and Judith Morice, under the said Decree of the 25th of January, 1731. the Master was to enquire what was reasonable to be allowed to their Father the said Humphry Morice, for their Maintenance, from the Times they respectively attained the Age of Twenty-one Years, to his Death; and to deduct the same out of what should be found due to them: And the Master was to take an Account of the Personal Estate of the said Humphry Morice come to the Plaintiff's Hands or Use; and the same, together with what should be received by her, or for her Use, was to be apply'd, in the first Place, to pay what should be found due to the several Plantiffs, under the said Decree of the 25th of January, 1731. and then to pay what should be found due to the Plantiffs under the said Decrees of the 2d and 9th of February, 1731. according to the said Decrees: And his Lordship declared, that the 500l. East India Stock, mentioned in the said Decrees of the 2d and 9th of February, 1731. and the Dividends received for the same, since the Death of the said Humphry Morice ought not to be considered as Part of his Assets, he being only a Trustee thereof: And ordered, That after Payment of what should be found due on the said Decrees, the Residue of the said Assets should be apply'd to the Payment of the several Judgments, and what was due on the Decree in the Cause, wherein the Defendants Weale and others were Plantiffs, according to their respective Priorities: And if any Thing should remain then to the Payment of the other Creditors, in a Course of Administration; and the Bank was to permit the Plaintiff to transfer the said 3000l. Bank Stock; and the Dividends thereof were to be laid out in South-Sea Annuities, in the Name of the Accountant-General, subject to further Order, with usual Directions for taking the said Accounts: And his Lordship declared, that the Plaintiff could not have her Election in this Cause, whether to abide by her Settlement, or to take the 5000l. thereby reserved to her; and ordered, That the Money which had been paid into the Bank, should be laid out in South-Sea Annuities, in the Name of the Accountant-General, subject to further Order; and the several Defendants, who had obtained Judgments, or who had not any Judgment or Decree, were enjoyned from proceeding at Law against the Plaintiff, for the Recovery of their respective Debts; and all Parties were at Liberty to apply for further Directions, and were to be paid their Costs to be taxed, out of the said Testator's Estate.

The Appellants have humbly appealed to Your Lordships, from the said last Decree, for the following (among other) Reasons.

For that all the Assets of the Testator are legal Assets, in the Distribution of which, the Law has never considered Decrees as equal to Judgments; and the Appellants having obtained a Priority at Law, and wanting no Assistance from a Court of Equity, it seems contrary to the fundamental Principles of such a Court, to take the Benefit of the Law from those who have in no Respect acted against Conscience; who have at least as much Equity to be paid, as the other Creditors can pretend to, and have besides, the Law on their Side: And there is no Precedent to be found where such Creditors have been enjoined from proceeding on their Judgments in favour of others who had obtained Decrees, though the Case must very frequently have happened.

Such a Precedent, if establish'd, will put an End to the Jurisdiction of the common Law over legal Assets, which is a very large Branch of Property, and draw the whole Distribution of them into Courts of Equity, which will be so far from promoting Justice and Convenience, that it will expose the Creditors of every Testator or Intestate to great Vexation in recovering their Debts, and give every Executor or Administrator new Means of Partiality and Fraud.

The whole Account of Assets must be taken in Equity; no Person can be paid till that is done, and the Demands of all the Creditors are adjusted; the whole Costs of the Litigation must come out of the Estate, by which the Assets will be considerably lessened; and where there are many Creditors, the Executor, in Conjunction with any one Creditor, may avoid paying the rest, or coming to any Distribution for several Years, which it will always be his Interest to do.

Bills brought by Executors or Administrators to bring in all the Creditors to accept of an equal Distribution, even before they have commenced any Suit, have been always rejected: And yet this is a Bill brought to protect the Executrix in the Preference she has given to some of the Creditors, and to support an unequal Distribution of the Assets, which is productive of much greater Hardships, and liable to much greater Frauds than Bills to establish an Equality.

If a Creditor by Judgment obtains Part of his Satisfaction out of legal Assets, Courts of Equity will not permit him to have any Part of the equitable Assets, without putting all the Creditors upon an equal Foot. But in this Case the Creditor at Law is restrained from taking any Part of the legal Assets, till the Creditor that sues in Equity is paid the Whole, which is inverting the Rule of Equality, and taking away the Benefit of the Law from the Appellants, in order to give all the Assets to the Respondents.

As there is no Precedent of the like Kind, this is a very unfavourable Case, to make the first Precedent in: For the Executrix in this Case lies under no Difficulties, but what she has voluntarily brought herself into, it being apparent that all the Proceedings in Equity were by Consent and in Concert between her and the Respondents, who sued her there; and that a Scheme was contrived between them to give this Preference, and to disappoint the Appellants and the other Creditors of their just Debts, and that without her Consent it would have been impossible that Decrees could have been obtained, against her that could have put her under any Difficulty: And while she was carrying on this partial and collusive Scheme, to exhaust all the Assets in Favour of a few, the delay'd the Appellants in their Proceedings, and obtained Time to plead, which would not have been granted, if this partial Conivrance had been known. And if ever Equity interposes in Cases of this Nature, it ought to be where the Executrix acts fairly and impartially, and desires to do equal Justice to all, and not in a Case contrived on purpose to prefer some favourite Creditors, and strip the rest of their whole Demands.

An Executor may at Law prefer which Creditor he pleases, by confessing a Judgment to one, and pleading it to the Demand of another. And therefore why may not the same Preference be given in Equity?

This is allowed at Law merely for the Safety of an Executor, that he may defend himself from being made liable to more Judgments than he has Assets to answer. But there is no Instance where this legal Privilege has been encouraged or aided in Equity: And at Law there is some Necessity for it, because the Executrix can plead Judgments only; and not any Suits that are commenced, in which Judgments are not obtained, which may be insisted upon in Equity, but Mrs. Morice purposely avoided it in this Case, though she put in her Answers after the Appellants Actions were commenced;

and

#### Objection.

#### Answer I.

and by permitting the legal Privilege of Preferring, to be made Use of in Courts of Equity, more frequent Opportunities will be given to make unequal and unfair Distributions of Assets, and at Times when the same End cannot be attained at Law, and in Cases where there can be no Necessity for it, which is adding greatly to the Hardships of Creditors, who are already too much at the Mercy of Executors.

Answer II. If at Law an Executor confesses a Judgment for more than is due, though for never so small a Sum, it is a *Devaletavit*, and he cannot protect himself, or cover the Assets of his Testator by a Judgment so confessed.

In this Case the Executrix has confessed and submitted to a Decree for more than was due, she ought to have craved an Allowance for the Maintenance of the Respondents *Anne* and *Judith Morice*, after they attained their Age of 21 Years; and if she had insisted upon this Allowance, which the Court has declared ought in Justice to have been made, it must have been referred to a Master to take an Account of what should be deducted for their Maintenance; in which Case, the Respondents *Anne* and *Judith Morice* could not have had a final Decree, prior, in Point of Time, to the Judgments obtained by these Appellants; and therefore their Priority is entirely owing to the Executrix's fraudulently submitting to pay more than was due to them. If then this is to be compared to the Case of Preference at Law, that Rule of Law ought strictly to prevail, and the Decree being for more than was justly due, ought not to stand in the Appellants Way, and ought to be confounded as taking Place only from the Time it was rectified by the late Lord Chancellor.

It is apprehended, that the Executrix has, in many other Particulars, submitted to pay more than was due, she ought, in the Case of so deficient an Estate, to have insisted upon an Allowance for the Respondents *Anne*, *Judith*, and *Elizabeth Morice*, from the Death of Mr. *Brown*, under whose Will they claim the Sums decreed to them, who died in 1720, and she ought not to have submitted to pay any Interest for their Legacies, under the Will of the said *Brown*, especially not at the Rate of 5 per Cent. from his Death to the pronouncing the said Decree, there being no Proof, that her Testator made Interest of the Money at that Rate; and it being certain that after the Death of her Testator, she did not make such Interest.

No Interest ought to have been allowed subsequent to the Decrees, much less at the Rate of 5 per Cent. by which Means the Respondents who obtained Decrees, are Gainers by a common Calamity, and have, during this long Litigation, got a higher Interest for their Money, than they could have made any where else. The allowing Interest is, in a Court of Equity, discretionary, and is hardly ever allowed in the Case of a deficient Estate; and had she disclosed the Affairs of her Testator, and that she could not safely pay the Money decreed, without bringing all the Creditors before the Court, it is apprehended the Court would not have decreed any subsequent Interest, especially as the only Argument by which the Decree Creditors claim to be first paid is, by comparing Decrees to Judgments, and insisting that both ought to be put exactly upon the same Footing; and yet Judgments carry no Interest from the Times they are signed, though obtained for Debts payable with Interest, and while the other Creditors loose above 100,000*l.* by which many of them are almost undone. It seems very inequitable, that a few should not only receive their whole Demands, but likewise be allowed Interest at the Rate of 5 per Cent. during a long Litigation, occasioned solely by a Scheme contrived between the Executrix and them, to prefer them in a Way never before attempted.

*For which, and other Reasons, the Appellants bumbly hope the said Decree shall be reversed, and the Bill of the Respondent Catherine Morice dismissed with Costs; and that the several Sums paid into the Bank, as the Debts recovered by several of the Appellants, and those whom they represent, shall be paid to them.*

JOHN VERNEY.  
WILLIAM MURRAY.

*James Henchell, Mary Glover, and Henry Vogbt, William Snelgrave, James Pearce in his own Right, and as Executor of Jeremiah Pearce, deceased; Robert More and Mary his Wife, Executrix of John Dugge, deceased; and Elizabeth Grove, Administratrix of Joseph Grove deceased,* -

*Catherine Morice, Widow and Executrix of Humphry Morice, Esq; deceased; Anne Morice, Judith Morice, and Elizabeth Morice, three of the Children of the said Humphry Morice deceased; Sir Thomas Lee, Thomas, William and Anne Lee, Anne Sandes, John Claxton, Sarah Claxton, Brown Claxton, Anne Colmore, and others,* -

*Respondents.*

The CASE of the said Appellants.

To be heard at the Bar of the House of Lords, on Thursday the 28th Day of April, 1737.